

This Opinion Is Not a
Precedent of the TTAB

Mailed: October 6, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Healthy Brands LLC

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Application Serial No. 88101117

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Thomas M. Joseph, Esq. for Healthy Brands LLC.

Brent Radcliff, Trademark Examining Attorney, Law Office 123,
Susan Hayash, Managing Attorney.

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Before Bergsman, Kuczma and Greenbaum, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Healthy Brands LLC (Applicant) seeks registration on the Principal Register for the proposed mark HEALTHY BRANDS, in standard characters, for “cosmetics,” in International Class 3.¹

The Examining Attorney refused to register the proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that HEALTHY BRANDS for cosmetics is merely descriptive. According to the Examining Attorney,

¹ Serial No. 88101117 was filed August 31, 2018, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s claim of a bona fide intent to use the mark in commerce.

consumers understand HEALTHY BRANDS to mean products conducive to good health.²

Applicant argues, to the contrary, that HEALTHY BRANDS as applied to cosmetics is suggestive because HEALTHY BRANDS “does not convey any particular function, characteristic, attribute, or use of the associated products because there is no general agreement as to what constitutes a ‘healthy’ cosmetic.”³ In other words, HEALTHY BRANDS is too vague and, therefore, it does not convey directly or immediately any meaning to consumers.⁴

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act precludes registration of a mark on the Principal Register that, when used in connection with an applicant’s goods or services, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). “A mark is merely descriptive if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1373 (Fed. Cir. 2018) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)). We “must consider the mark as a whole and do so **in the context of the goods or services at issue.**” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (emphasis added); *In re Calphalon*, 122 USPQ2d 1153, 1162 (TTAB

² Examining Attorney’s Brief (11 TTABVUE 6).

³ Applicant’s Brief, p. 8 (9 TTABVUE 9).

⁴ *Id.* at pp. 8-9 (9 TTABVUE 9-10).

2017). “Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). Indeed, “[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS*, 103 USPQ2d at 1757 (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

This applies to compound marks as well.

In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components. ... [I]f ... two portions individually are merely descriptive of an aspect of appellant’s goods [or services], the PTO must also determine whether the mark as a whole, i.e., the combination of the individual parts, conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.

In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004).

If each component retains its merely descriptive significance in relation to the goods or services, then the mark as a whole is merely descriptive. *Id.* at 1374; *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1955 (TTAB 2018).

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE defines the word “healthy,” inter alia, as “conducive to good health; healthful.”⁵ It defines the word

⁵ December 17, 2018 Office Action (TSDR 5). Page references to the application record are to the downloadable .pdf version of the USPTO’s Trademark Status & Document Retrieval (TSDR) system.

“brand,” *inter alia*, as “a distinctive category; a particular kind.”⁶ Merriam-Webster.com defines “brand,” *inter alia*, as “a class of goods identified by name as the product of a single firm or manufacturer.”⁷ The composite mark HEALTHY BRANDS, therefore, means products tending to produce good health.

The evidence submitted by the Examining Attorney listed below further supports this finding of fact:

- Healthline website (healthline.com)

Healthy Cosmetics

The FDA, labeling, and beauty product safety

Many people seek out beauty products that are formulated from healthy, nontoxic ingredients.⁸

- MeLange Cosmetics website (melangecosmetics.com)

MeLange Minerals are pure, natural, healthy cosmetics for your skin.⁹

- The Natural Cosmetics website (naturalcosmetics.com)

Constantly thinking about natural and healthy cosmetics for your skin?¹⁰

- Red Apple Lipstick website (redapplelipstick.com)

A Summer Passion – A Letter From The Management

... Firstly, just about almost every dime you spend on Red Apple Lipstick products is poured directly into research

⁶ *Id.* at TSDR 4.

⁷ March 3, 2020 Request for Reconsideration Denial (6 TTABVUE 8).

⁸ July 10, 2019 Office Action (TSDR 5).

⁹ *Id.* at TSDR 6.

¹⁰ *Id.* at TSDR 7.

and development of new, safe and healthy cosmetics for all of you.¹¹

- Snow Creek Meadows website (snowcreekmeadows.com)

No soap goes to waste!

We've been making goat-milk based soap and healthy cosmetics for some time now.¹²

- Branded Girls website (brandedgirls.com)

Healthy Cosmetic Brands – Top 15 Healthy and Organic Makeup Brands

Healthy Cosmetic Brands ... [t]hese 15 brands have planned to take a different lead in their approach to serving people's cosmetic needs. With the usage of absolutely nature-friendly ingredients their products and never experimenting at the cost of poor animals, these products have proved their worth and now have landed among the list of top 15 healthy and organic cosmetic brands that all skin-conscious people need in their lives right now.¹³

#9 – 100% Pure

The typically named brand 100% pure is everything you expect in an organically healthy brand. Without the addition of heavy chemicals, the products here are created with nourishing ingredients that do not even need the cruelty testing on any living being.¹⁴

#5 – Au Naturale

... She began with nothing but from scratch by mixing simple organic substances and making healthy cosmetics a

¹¹ *Id.* at TSDR 8.

¹² *Id.* at TSDR 9.

¹³ March 3, 2020 Request for Reconsideration Denial (7 TTABVUE 9).

¹⁴ *Id.* at 7 TTABVUE 15.

living reality for all women who desire healthy with beauty and women of previous and this era is [sic] really grateful for such invention and her determination.¹⁵

- Ethical and Chic website (ethicalandchic.com)

Ethical Spotlight/100 percent pure brand overview

100 percent pure is a natural, organic, and healthy brand of beauty and skincare.¹⁶

We find that the proposed mark HEALTHY BRANDS when used in connection with cosmetics is merely descriptive because it directly conveys to customers and potential customers the purpose (i.e., to induce good health) or characteristic (i.e., made through a healthful process) of the cosmetics. It takes no mental leap or multiple step reasoning process to understand that HEALTHY BRANDS means that Applicant intends to make the cosmetics in a wholesome manner and induce good health.

Accordingly, we disagree with Applicant's argument that HEALTHY BRANDS is too vague and, therefore, does not directly convey the purpose or characteristic of the cosmetics.¹⁷ "A mark may be merely descriptive even if it does not describe the 'full scope and extent' of the applicant's goods or services." *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress*

¹⁵ *Id.* at 7 TTABVUE 17.

¹⁶ *Id.* at 5 TTABVUE 8.

¹⁷ Applicant's Brief, pp. 8-9 (9 TTABVUE 9-10). In reaching this conclusion, we have considered the website evidence Applicant submitted expanding the website excerpts the Examining Attorney submitted discussed above in order to make its point that there is no generally understood meaning for the term "healthy brands." January 9, 2020 Request for Reconsideration (4 TTABVUE 41-66).

Operating Corp., 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)). It is enough if a mark describes a single feature or attribute. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Oppedahl & Larson LLP*, 71 USPQ2d at 1371.

Applicant contends that marks that indicate results, such as HEALTHY BRANDS, are suggestive.

By its very nature, a mark that indicates results, such as HEALTHY BRANDS, is suggestive as it requires the buyer to undergo a mental leap regarding the product's attributes. Such a mental leap, which is not almost instantaneous, strongly indicates that a mark is suggestive, not descriptive.¹⁸

Applicant refers to 16 third-party registrations of purportedly analogous or similar “results based” marks as evidence that HEALTHY BRANDS is suggestive.¹⁹ The following registered marks are illustrative:

- Registration No. 1487357 for the mark CALIFORNIA TAN for “tanning lotions, gels, and oils; and moisturizers and cleansers,” in International Class 3;²⁰
- Registration No. 3322960 for the mark HEALTHY HAIR (“hair” disclaimed) for “hair brushes,” in International Class 21;²¹ and
- Registration No. 2497677 for the mark QUIETRIDE for “equipment, specifically modulus plate casters for installation on office equipment carts and other wheeled

¹⁸ Applicant's Brief, p. 7 (9 TTABVUE 8).

¹⁹ January 9, 2020 Request for Reconsideration (4 TTABVUE 15-39).

²⁰ *Id.* at 4 TTABVUE 15.

²¹ *Id.* at 4 TTABVUE 17.

equipment used in mailroom, reprographic, security, printshop and other non-factory/non-front office work areas,” in International Class 12.²²

These prior registrations do not conclusively rebut the Examining Attorney’s evidence that HEALTHY BRANDS is merely descriptive in connection with cosmetics. First, as indicated above, we “must consider the mark as a whole and do so in the context of the goods or services at issue.” *DuoProSS*, 103 USPQ2d at 1757. Therefore, third-party registrations for disparate goods or services have little, if any, relevance.

Second, a mark under consideration may tilt toward suggestiveness or descriptiveness depending on context and any other factor affecting public perception. The Board must decide each case on its own merits. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Owens-Corning Fiberglas Corp.*, 774 F.2d 116, 227 USPQ 417, 424 (Fed.Cir.1985). Even if some prior registrations have some characteristics similar to Applicant’s mark, the USPTO’s allowance of such prior registrations does not bind the Board. *Nett Designs*, 57 USPQ2d at 1566.

Decision: The refusal to register Applicant’s proposed mark HEALTHY BRANDS is affirmed.

²² *Id.* at 4 TTABVUE 18.